(Spl.-H.C.A.S.C.D., 78-e)

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI, GOA.
APPELLATE SIDE

DISTRICT :

WRIT PETITION NO.366 OF 2004

Office Notes, Office Memoranda of Quorum, appearances,Court's orders of directions and Registrar's orders	Court's or Judge's orders

Petitioner in person.

CORAM : P. V. HARDAS, J.

DATE : 26th August, 2004

P.C.

The petitioner is present in person and has filed this petition assailing the Order passed by the Civil Judge, Senior Division, Mapusa, dated 19th April, 2004, in Civil Miscellaneous Application No. 484/02/A in Special Civil Suit No. 59/02/A. At the outset, the Presiding Judge who has been joined as respondent no.1 to the petition, should be deleted.

2. The facts in brief as are necessary for the decision of this petition can be summarized as under:-

The petitioner claims that on 21st November, 2002 when the Civil Suit No.59/02/A came up for hearing, the Presiding Officer informed the petitioner that he was contemplating instituting contempt proceedings against the petitioner. The petitioner states that the reason for saying this was " that affidavit filed in superior Court cannot be subject-matter in a suit filed in subordinate Court." The petitioner further avers that the said reason of the trial Court appears to him ""to be sound and without much reflection; he accepted the suggestion of the Court and wrote on the back of the plaint that he may be permitted to withdraw the suit. It appears thereafter that accordingly the suit came to be dismissed as withdrawn on the basis of the endorsement. Thereafter, on the next day, the petitioner filed an application purporting to be an application under Section 151 of the Code of Civil Procedure praying for "setting aside of the Order of dismissal

of the suit as withdrawn". The trial Judge by Order which is impugned in the present petition, dismissed the said application on the ground that the said Order could not be recalled by filing an application under Section 151 of the Code of Civil Procedure.

3. From the Order impugned, it appears that the averments which were made by the petitioner that the Presiding Officer had stated that he would initiate contempt proceedings and therefore he made an endorsement etc. have all been denied by the original defendants in reply to the application submitted by the petitioner.

4. I have heard the petitioner in person and I have perused the order of the trial Judge and I do not see any infirmity to warrant any interference in the exercise of writ jurisdiction under Article 227 of the Constitution of India. This Writ Petition is, accordingly dismissed with no order as to costs.

P. V. HARDAS, J.

mc.